

## REMARKS

The following remarks responds to a non-final Office Action mailed January 26, 2005. Claims 1-20, 22, 23, 26-32, 34-42, 44-49, 51 and 52 are pending in the present application. Applicants respectfully request reconsideration of the pending claims in view of the following remarks.

By action taken here, Applicants in no way intend to surrender any range of equivalents beyond that needed to patentably distinguish the claimed invention as a whole over the prior art. Applicants expressly reserve all such equivalents that may fall in the range between Applicant's literal claim recitations and combinations taught or suggested by the prior art.

Applicants respectfully respond to Examiner's remarks in like numbered paragraphs:

### Claim Rejections under 35 U.S.C. § 103(a)

1. To establish a *prima facie* case of obviousness:

- 1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- 2) There must be a reasonable expectation of success; and
- 3) The prior art reference must teach or suggest all the claim limitations.

2. Claims 1-20, 22-23, 26-32, 34-42, 44-49 and 51-52 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,141,611 (hereinafter, "Mackey") in view of U.S. Patent No. 6,163,277 (hereinafter, "Gehlot").

Mackey discloses an insurance computer for wireless code access of incident data from a remote vehicle mounted system (Fig. 1; abstract; col. 2, lines 35-40). However, Mackey does not teach or suggest "coded access of incident data...from a remote vehicle continuous, incident

recording system, **located on a vehicle**"; "at least one interface for transmitting a code to the **remote vehicle continuous, incident recording system** to access the data" or "a...transceiver adapted to transmit the **accessed data** from the remote vehicle continuous incident recording system located on the vehicle to the device..." Instead, Mackey teaches (col. 1, lines 39-46), "In response to an accident detector trigger signal, the data stored on-board the vehicle is **automatically transmitted** over a wireless link (e.g. public access links such as CDPD, satellite and Iridium or a private link) **to a central data base**. Data in the central data base is connected by a digital data network such as the Internet or a secured intranet and the data can be accessed via a computer terminal of an authorized party..." (emphasis added; see also col. 2, lines 30-40). Accordingly, by not requiring an intermediate "central data base", Applicants' system provides the advantage of remotely accessing the data directly from the on-board system. For example, the claimed device can be located in a variety of locations, including emergency vehicles, military vehicles, and the like, allowing parties to directly access the unit. (See Application at page 11, lines 16-22.) This allows emergency personnel to view a vehicle that has been involved in an accident or subjected to criminal behavior while they are in route rather than having to wait for the information to go through a centralized data base. In contrast, Mackey sends all information to a central data base rather than allowing various parties direct access to the information.

Gehlot teaches a system and method for enforcing speed limits. In particular, a mobile system adapted for use on a police vehicle (10) for downloading data directly from a civilian vehicle is disclosed (12) (Fig. 1; col. 3, lines 19-21; col. 5, lines 11-18; col. 7, lines 55-62), including accessing the processing unit of a speeding vehicle (col. 2, lines 30-38). Gehlot does not teach or suggest the means by which such access or two-way communication between vehicles is to be accomplished. Gehlot does not teach or suggest coded access of incident data ... from a remote vehicle continuous, incident recording system, **located on a vehicle**"; "at least one interface for transmitting a code to a **remote vehicle continuous, incident recording system** to access the data". Due to the lack of disclosure by Gehlot, one of skill in the art could easily envision Gehlot as disclosing a system which constantly transmits vehicle information to any available receiver, rather than one requiring coded access. That is, Gehlot speculates wildly

about the potential embodiments of their invention, but does not enable, teach or suggest the means by which such speculative embodiments are to be accomplished.

Applicants further argue that, contrary to the Examiner's assertion, the cited references also do not supply motivation to combine their respective teachings to arrive at the device and method of the present invention. The Federal Circuit has consistently held that in order to make out a proper rejection under 35 U.S.C. 103(a), the art must include motivation to modify (the cited art) and suggestions of how to accomplish modification (see in *Re Bell* and *In re Deuel*), rather than a mere observation (in hindsight) that all the elements of the claimed invention can be found somewhere in the prior art. The absence of motivation and suggestions of how to accomplish a particular goal is in fact the very essence of inventiveness that makes the present invention patentable over the prior art.

Accordingly, Applicants submit that Mackey and Gehlot, when viewed alone or in combination, fail to teach or suggest every limitation in claims 1-20, 22-23, 26-32, 34-42, 44-49 and 51-52, and therefore the references are not capable of rendering the claimed invention obvious. Furthermore, nothing in Mackey or Gehlot or in the knowledge generally available to one of ordinary skill in the art suggests modifying the references to arrive at the claimed invention. Applicant therefore respectfully requests withdrawal of the rejection.

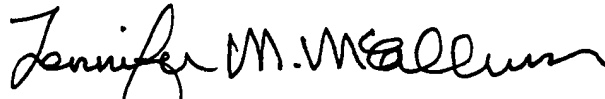
In view of these remarks, Applicants submit that 1-20, 22-23, 26-32, 34-42, 44-49 and 51-52 are unobvious and therefore patentable over the prior art of record.

### **Conclusion**

Applicants believe that this is a full and complete response to the rejections raised by the Examiner in the Office Action of January 26, 2005. Should the Examiner have any questions, comments, or suggestions that would expedite the prosecution of this application to allowance, the Examiner is invited to contact Applicants' undersigned attorney.

A credit card payment form authorizing the charge of \$225 for a two-month extension of time is attached herewith. If additional fees are required in connection with the filing of this paper, please charge deposit account number 502679.

Respectfully submitted,



Jennifer M. McCallum, Ph.D., Esq.

Reg. No. 52,492

The McCallum Law Firm, LLC.

132 Kolar Court

Erie, CO 80516

Telephone: (303) 828-0655

Fax: (303) 828-2938

Date: June 27, 2005